

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III**

STATE OF TENNESSEE, ex rel.
PAULA A. FLOWERS, Commissioner
of Commerce and Insurance for the
State of Tennessee,

Petitioner,

VS.

TENNESSEE TRUCKING
ASSOCIATION SELF INSURANCE
GROUP TRUST, a Tennessee workers
compensation self-insurance group,
TRUCKING SERVICES, INC.,
a Tennessee corporation,

Respondent.

NO. 04-245-III

FILED
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CLERK OF COURT
DAVIDSON CO. CHANCERY CT.

MEMORANDUM AND ORDER

The Commissioner for Commerce and Insurance for the State of Tennessee filed the above-captioned petition for the appointment of a receiver to liquidate Tennessee Trucking Association Self Insurance Group Trust (the "Trust" or "TTA-SIGT"), a trust set up by trucking companies to provide worker's compensation insurance for the group. Finding that TTA-SIGT was insolvent and continued operation of the Trust would be financially hazardous to the policyholders, members, creditors and the public, the Court entered an order on February 6, 2004, granting the State's petition. Consistent with the liquidation, the February 6, 2004 order contained an injunction in paragraph 24 preventing the

commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the Trust or against its assets or any part thereof until further order of the Court. This injunction was part of the overall receiver and liquidation scheme to assure fair and orderly distribution and payment of claims.

This matter is presently before the Court on the motion of certain trucking company members of the Trust for an extension and/or clarification of the injunction contained in paragraph 24 of the February 6, 2004 order. Prohibited by that paragraph 24 injunction from obtaining payment from or executing on the Trust to satisfy a judgment rendered in 2004 in a worker's compensation case, a worker's compensation claimant, Mr. Sepulveda, executed on a trucking company/member of the Trust for payment of the judgment. Attorney Roland Lowell, counsel for that member, filed a petition for a temporary restraining order and temporary injunction with this Court to prevent Mr. Sepulveda from proceeding not only against the Trust but its members, the argument being that any collection efforts against members would ultimately result in claims by those members against the Trust for satisfaction of the claims. As eventual claims against the Trust, these attempts at direct actions and execution against the members, Mr. Lowell argued, should be covered by and included in the liquidation provisions of the Trust for the orderly and equal treatment of claims.

Tennessee Code Annotated section 56-9-105(a)(1-11) as well as 56-9-313 provide for the issuance of injunctions "as may be deemed necessary" to prevent interference with the receivership proceeding and to prevent levying of execution against an insurer or its policyholders.

This Court concludes that because claims or executions against the members in this receivership potentially or ultimately shall be asserted by those members as claims against the Trust, the Court is required, so as to comply with and accomplish the purpose of Tennessee Code Annotated sections 56-9-105(a)(1-11) and 56-9-313, to clarify and extend the terms of the injunction provided for in paragraph 24 of the Court's February 6, 2004 order to include that the injunction applies to actions and executions against members as well as the Trust. The Court, therefore, as ordered below, shall adopt the clarification of the February 6, 2004 order proposed by the Receiver and Attorney Lowell.

In addition to the systemic concern of members of the Trust as to attempts to proceed against them directly, which the Court has addressed above, there is also before the Court the specific case of Mr. Sepulveda. As noted above, judgment was rendered in that case in 2004. Counsel for Mr. Sepulveda then executed on a member of the Trust to obtain payment of the judgment. To avoid defaults with creditors and its bank, the member paid the judgment. The record establishes, from the representations of counsel for Mr. Sepulveda and counsel for the member, that payment was made on the claim by the member and distribution of funds was

made to Mr. Sepulveda just prior to the Court entering a temporary restraining order to prevent that distribution.

Monies having been distributed to the worker's compensation claimant before this Court's temporary restraining order was entered renders the matter moot as to entry of any injunctive relief. There no longer is any pending execution to enjoin. The execution has been completed, and there is no relief this Court can provide, in terms of injunctive relief, to halt the execution.

Moreover, there is no authority for this Court to require repayment by Mr. Sepulveda or his counsel to the member and require processing of the claim through the trust. The Court concludes that the February 6, 2004 order, while clearly enjoining actions and executions against the Trust, did not explicitly enjoin direct actions against members. The injunction order was, therefore, subject to interpretation as to the propriety of proceeding directly against a member. The Court has now clarified and extended the February 6, 2004 order to explicitly apply the injunction as to direct claims and executions against members. But there is no authority for this Court to apply the clarification and extension retroactively as to Mr. Sepulveda since he has already received payment of his claim voluntarily by the member. The Court, therefore, is unable to provide relief as to the completed payment on the Sepulveda claim.

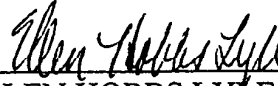
It is therefore ORDERED that the temporary restraining order enjoining execution by Mr. Sepulveda and the bond therewith are dissolved. The application for a temporary injunction to prevent payment of Mr. Sepulveda's claim is denied on the ground of mootness.

It is further ORDERED that the February 6, 2004 order of this Court appointing a receiver for purposes of liquidation of Tennessee Trucking Association Self Insurance Group and granting an injunction is amended to add the following provisions to paragraph 24 of the order. The amended portions added to paragraph 24 are underlined:

24. **Injunctions.** Pursuant to Tenn. Code Ann. § 56-9-105(a)(1-11), all persons, firms, corporation and associations, including, but not limited to, Respondent TTA-SIGT and its officers, directors, members, subscribers, agents, attorneys, accountants, contractors, subcontractors and all other persons with authority over or in charge of any segment of TTA-SIGT's affairs, including, without prejudice to the generality, its Administrator, Respondent Trucking Services, Inc. (TSI), its claims administrators past and present, including, but not limited to Management Services USA, LLC, a Cannon Cochran Management Services, Inc. company (MS USA), and Brentwood Services, Inc., TTA-SIGT's owners, members, directors, agent, employees and officers, and any others, are prohibited and permanently enjoined from:

- (1) the transaction of TTA-SIGT's business, except as to those activities as may be expressly authorized in writing by the Liquidator in aid of the liquidation,
- (2) the waste or disposition of its property,
- (3) the destruction, deletion, modification, concealment or waste of its records, databases or computer files,
- (4) the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer, the member trucking companies, i.e. the insureds of TTA-SIGT, or against their assets or any part thereof to recover any claim for which a proof of claim form was or is filed, by anyone, with the Liquidator until further order of this Court, this order shall be nunc pro tunc to February 6, 2004, and

(5) any other threatened or contemplated action, not permitted under the Act, that might lessen the value of the insured's assets or prejudice the rights of any policyholders, enrollees, creditors or shareholders, or the administration of any proceedings under the Act;
and this Court further authorizes the Liquidator to apply outside of Tennessee for the relief described in Tenn. Code Ann. § 56-9-105(a);



ELLEN HOBBS LYLE
CHANCELLOR

cc: The list of persons and entities who have been mailed a copy of this order is attached to the original order and the list may be viewed in the office of the Davidson County Clerk and Master.